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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re A.H., A Person Coming Under the  
Juvenile Court Law.

B212008  
(Los Angeles County  
Super. Ct. No. CK73193)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

Plaintiff and Respondent,

v.

R.H.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County. D.  
Zeke Zeidler, Judge. Affirmed.

Cameryn Schmidt, under appointment by the Court of Appeal, for Defendant  
and Appellant.

Raymond G. Fortner, County Counsel, James M. Owens, Assistant County  
Counsel, and Melinda White-Svec, Deputy County Counsel, for Plaintiff and  
Respondent.

This is the second time this matter has been before us. Previously, appellant R.H. (Father) appealed a pre-disposition restraining order precluding him from contacting or approaching his teenage daughter, A., and A.'s mother, A.F. (Mother). Father contended the order was not supported by substantial evidence and the procedures under which the order was obtained were defective. We concluded substantial evidence supported the issuance of the order and found no defect in the procedures leading to its issuance. Accordingly, in an opinion dated May 12, 2009 (In re A.H., case no. B210609 [nonpub. opn.]), we affirmed.

Father now appeals the jurisdictional and dispositional orders issued by the court on August 12, 2008, contending they were not supported by substantial evidence. We affirm.

### **FACTUAL AND PROCEDURAL BACKGROUND<sup>1</sup>**

Father and Mother have been separated since A. was two years old.<sup>2</sup> Initially, Mother was given primary custody by the superior court and Father was given visitation rights. In 2004, the court ordered joint legal custody, with primary physical custody to remain with Mother. The original custody order required the parents to refrain from making derogatory remarks about each other in the presence of A. and required custody exchanges to take place at a police station. The 2004 order required that all custody exchanges take place at A.'s school or at a police station, without communication between the parents. It further required both parties to attend a Parents Without Conflict program, and required Father to

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<sup>1</sup> At Father's request, we took judicial notice of the record in the prior appeal. The facts through the July 2008 hearing on the restraining order are essentially those stated in our prior opinion.

<sup>2</sup> Father and Mother were never married. At the detention hearing, the juvenile court found Father to be A.'s presumed father.

undergo counseling to address anger management, parenting and co-parenting issues.

#### *A. Detention*

According to the detention report, on April 18, 2008, when A. was 14, Father arrived to pick her up at her maternal grandmother's house for a scheduled weekend visitation.<sup>3</sup> A. needed her school books from Mother's house and called Mother to ask her to bring the house key. Mother was unable to do so, as she was at a nearby hospital, waiting for her father to be released. When informed of this, Father began swearing and calling Mother names, which led to an argument between Father and A. and caused A. to return to her grandmother's house. After repeated phone calls from Father, during which Father demanded that A. leave with him for their scheduled visitation and cursed at the maternal grandmother, A. agreed to go with Father. During the drive, Father referred to Mother as a "bitch," a "slut" and a "whore." A. asked him: "How do you think it make[s] me feel when you talk about my mom like [that;] how would you feel if someone talked [about] your mom like that and called her names[?]" Father slapped A.'s thigh several times, grabbed her by the neck, squeezed her neck and shook her. A. became afraid and contemplated jumping out of the car. Instead, she waited until Father stopped to pay a bill, then called a maternal relative to pick her up and return her to her grandmother's house. Once there, with the assistance of her grandmother, A. called the police to report the incident.

Interviewed by the caseworker after the incident was reported to DCFS, A. said that Father "often" hit her on the legs and called Mother names, and

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<sup>3</sup> Prior to that date, DCFS had received two other referrals concerning Father's treatment of A. -- in August 2003 and October 2007. Both were investigated and closed as unfounded.

sometimes called A. “dumb” or “stupid.” Father also compared A. to a prostitute based on her appearance and clothing. In addition, Father had on more than one occasion gone to A.’s school and yelled at her in front of other pupils. A. said she was afraid of Father and did not want to see him anymore.

Mother had no first-hand knowledge of the April 18 incident, but reported that there was a history of animosity between Mother and Father. Father often claimed Mother was trying to prevent him from seeing A. Once, he had gone to Mother’s home with police officers to enforce his visitation rights. Although Father had been ordered to attend counseling and anger management programs by a family law court, Mother did not believe his behavior had improved. During the Parents Without Conflict program ordered by the superior court in 2004, Father spent most of the session talking negatively about Mother. Mother said she was concerned about protecting A.

Father confirmed the history of animosity. He stated that in the past, Mother had tried to prevent him from seeing A. and that he had numerous police reports documenting those occasions. He believed A. was doing poorly in school and that Mother was not doing enough to help her improve. A few weeks prior to the incident, A. received a failing grade in one of her classes. Father told her she could not go to an upcoming school dance, but Mother allowed her to go.<sup>4</sup> Concerning the April 18 incident, Father admitted that he struck A., stating that he was “disciplining” her because she was being disrespectful and “cop[p]ing an attitude.” He stated he struck her thigh once and grabbed her collar, not her neck.<sup>5</sup> Father speculated that A. was mad at him about the dance, rather than scared. Father also

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<sup>4</sup> A. reported that the school dance incident occurred in September 2007, and that Father showed up at her school in an attempt to keep her from attending.

<sup>5</sup> Several witnesses noted swelling and/or discoloration on A.’s neck.

admitted saying negative things about Mother and cursing at the maternal grandmother. He denied calling A. stupid, but said he told her on occasion that she was “acting stupid” or “acting dumb.”

The maternal grandmother reported that Father “constantly” yelled at A., making her nervous, and had cursed at the grandmother on many occasions. On the day of the incident, A. told her grandmother she did not want to go with Father. Father called the grandmother’s house and repeatedly demanded that A. be brought out to him. Also included in the caseworker’s detention report was a letter written by a high school counselor which reported that A. had confided that Father had been “hitting her, grabbing her, and speaking ill of her mother for years.”

On May 19, after the initial family interviews, but before the dependency petition was filed, Mother and Father had a hearing in the family law division of the superior court. Mother erroneously reported to the caseworker that the court had lifted a restraining order against Father. The court had, in fact, issued a two-month restraining order and scheduled a rehearing for July 14, the date the temporary restraining order was set to expire.

Interviewed after the family law hearing, A. said she was still “very afraid” of Father “because she never knows when he will snap.” She said she did not feel safe being alone with Father. She expressed concern that he might go to her school again and try to contact her there.

At the detention hearing, the court, acting on the recommendation of DCFS, detained A. with Mother and granted Father weekly monitored visitation. The parties discussed the family law temporary restraining order, recognizing that it was set to expire on the next scheduled family law hearing date, July 14. The court scheduled a July 14 dependency hearing in lieu of the family law hearing and advised the parties that the July 14 hearing would include the restraining order as well as jurisdictional and dispositional issues.

*B. July 14, 2008 Hearing on Restraining Order*

Prior to the July 14 hearing, A. was interviewed again. She said Father's typical method of discipline was to hit her leg with his hand or hit her with a belt. She said Father did not want her to wear lip gloss or nail polish or wear her hair in certain ways, and was critical of her friends. She reiterated the events of April 18 with some changes. She said she had not waited for Father after school, but had gotten onto the school bus and arranged telephonically for Father to pick her up at her grandmother's house. She said Father hit her leg only once, not three times, but that he later threatened to pull his belt off and hit her with that. A. denied that Mother had refused to allow scheduled visits, but said that Father often did not show up or arrived hours late.

Interviewed again, Father admitted spanking A. three times in the past. He related an incident that occurred approximately two weeks prior to the April 18 incident. He and A. had gone shopping and Father asked A. to leave her purse in the car so that her hands would be free to carry their purchases. This led to an argument and A. became "disrespectful." He "grabbed [her] by the arm to redirect her negative behavior," but she continued to pout and be disrespectful. Several onlookers suggested she should have "gotten a whooping."

Mother reported that she overheard Father cursing and yelling at A. during a phone call on April 11, 2008, and that in 2005, he left a lengthy message, cursing at Mother and threatening to "whoop [A.'s] ass." She said that Father had, in the past, hit A. with a belt or with his hand. When the last such incident occurred, Mother called DCFS (presumably leading to the October 2007 referral). When A. was 12 or 13, Father had made negative comments about her lip gloss and nail polish, comparing her to a prostitute and stating "she looked like she wanted to get raped." Mother acknowledged that in the past, she had refused to allow A. to go on a scheduled visit with Father when Father appeared upset.

The court issued the restraining order, restraining Father from “harass[ing], attack[ing], strik[ing], threaten[ing], assault[ing], . . . , hit[ting], follow[ing], stalk[ing], molest[ing] destroy[ing] personal property [of], disturb[ing] the peace [of], keep[ing] under surveillance, or block[ing] movements [of]” Mother and A., and from contacting Mother or A. by telephone, mail or email “except for brief and peaceful contact as required for court-ordered visitation of children.”<sup>6</sup> The court stated that although the restraining order was set to expire July 13, 2011, “I can always vacate it before that.”

### *C. Jurisdiction and Disposition*

The Welfare and Institutions Code section 300 petition originally alleged that jurisdiction over A. was appropriate under subdivision (a) (serious physical harm) and subdivision (b) (failure to protect).<sup>7</sup> The petition alleged that Father “physically abused the child by choking the child, forcibly grabbing the child’s neck and violently shaking the child by the neck” and by “repeatedly str[iking] the child’s leg” and by “forcibly grabb[ing] the child and str[iking] the child’s legs” on prior occasions.

A contested jurisdictional and dispositional hearing was held on August 11 and 12, 2008. A. again related the events of April 18. She stated that she left school by bus, and was picked up at the bus stop and driven to her grandmother’s house by her uncle. She called Father from her uncle’s car. When Father arrived to get her, she and Father got into an argument almost immediately because A. did not have the things she needed to spend the weekend with Father. Father said if Mother was not “acting crazy,” he could pick A. up for the weekend visit on

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<sup>6</sup> The order permitted Father weekly monitored visitation with A.

<sup>7</sup> Statutory references are to the Welfare and Institutions Code.

Saturday at Mother's house. This led to "screaming and yelling." A. went inside her grandmother's house and did not emerge until her uncle told her she should go with Father. A. left with Father who continued to "scream[]" and yell[]" about Mother and her family. Father pulled the car over and slapped A. on her thigh two or three times. He also grabbed her by the back of the neck and squeezed until it hurt her to breathe. She put her hand on the door handle after he hit her but before he grabbed her neck. She wanted to get out of the car because she was "scared for [her] life." Afterward, when Father stopped to run an errand, A. called her aunt to come pick her up. Later that night, A. spoke with police officers about the incident. The April 18 slaps on her thigh did not cause any bruising, but left a small red spot. The squeeze left a mark on her neck.

A. could not recall exactly how many times Father had hit her before the April 18 incident. He generally hit her on her arm, her thigh and other parts of her leg, using an open hand. She recalled that on the day Father went to her school to prevent her from going to the dance, he screamed and cursed at her and "slapped [her] on [her] legs a few times." A. testified she was afraid of Father due to having been hit by him and because of his "screaming, cussing, and yelling."

Father testified that A. became angry at him after he picked her up on April 18 because he made clear she was not going to be able to use the cell phone or the computer over the weekend as punishment for getting bad grades. She began to complain and talk back to him. He hit her leg twice with his palm to let her know she should calm down and stop talking. She started to cry. He assumed it was because she was upset about having her privileges taken away, not because she was hurt or afraid. He started to pull over. She reached for the door while the car was still moving. Believing she was trying to get out of the car, he grabbed her collar.



The court found Father's version of events not credible. Commenting on the evidence, the court stated: "I have no doubt that [A.] is rebellious. No doubt that she is playing [Mother] against [Father], but at the same time, that does not negate [Father's] inability to control his anger resulting in physical abuse that comes with it." The court amended the petition to state: "[Father] exhibits a lack of anger management which has resulted in him physically abusing the minor [A.] during these arguments. This physical abuse has included [Father's] slapping the minor on her legs, thighs, and/or arm, resulting in redness. [¶] On one occasion[,] [Father] grabbed her by the neck[,] causing bruising and marks." The court sustained the petition as amended.<sup>8</sup>

Turning to disposition, the court found by clear and convincing evidence that "[s]ubstantial danger exists to the physical health of [the minor] and/or [the minor] is suffering severe emotional damage, and there is no reasonable means to protect [her] without removal from the parent's or guardian's physical custody." The court ordered A. detained with Mother. Both parents were ordered to participate in a parent education program, individual counseling to address case issues and Parents Without Conflict. Father was to participate in anger management classes and conjoint counseling with A., when recommended by her therapist. Father was allowed monitored visitation.<sup>9</sup> Father appealed.

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<sup>8</sup> Counsel for DCFS, Mother and A. all concurred with the decision to sustain the amended petition.

<sup>9</sup> The jurisdictional and dispositional orders were stayed pending issuance of ICWA notices. The stay was lifted October 29, 2008.

## DISCUSSION

### A. Jurisdiction

Father first challenges the court's jurisdictional finding based on a lack of evidence. In order to assert jurisdiction over a minor, the juvenile court must find that he or she falls within one or more of the categories specified in section 300. (*In re Veronica G.* (2007) 157 Cal.App.4th 179, 185.) DCFS bears the burden of proving by a preponderance of the evidence that the minor comes under the juvenile court's jurisdiction. (*Ibid.*; *In re Shelley J.* (1998) 68 Cal.App.4th 322, 329.) On appeal from a jurisdictional order, "we must uphold the court's findings unless, after reviewing the entire record and resolving all conflicts in favor of the respondent and drawing all reasonable inferences in support of the judgment, we determine there is no substantial evidence to support the findings." (*In re Veronica G.*, *supra*, 157 Cal.App.4th at p. 185.)

"The basic question under section 300 is whether circumstances at the time of the hearing subject the minor to the defined risk of harm." (*In re Nicholas B.* (2001) 88 Cal.App.4th 1126, 1134.) The petition here alleged that jurisdiction over A. was appropriate under section 300, subdivision (a), in that "[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm inflicted nonaccidentally upon the child by the child's parent or guardian"<sup>10</sup> Under the provisions of section 300, subdivision (a), "a court may find there is a substantial risk of serious future injury based on the manner in which a less serious

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<sup>10</sup> The petition also alleged jurisdiction was appropriate under section 300, subdivision (b) -- "[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child." It does not appear that this allegation was directed at Father. Assuming it was, we need not consider whether it was substantiated by the evidence, as the finding under subdivision (a) fully supported the court's rulings.

injury was inflicted, a history of repeated inflictions of injuries on the child or the child's siblings, or a combination of these and other actions by the parent or guardian which indicate the child is at risk of serious physical harm.” “While evidence of past conduct may be probative of current conditions, . . . the past infliction of physical harm by a caretaker, standing alone, does not establish a substantial risk of physical harm; ‘[t]here must be some reason to believe the acts may continue in the future.’” (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 824, quoting *In re Jennifer P.* (1985) 174 Cal.App.3d 322, 326; accord *In re Veronica G.*, *supra*, 157 Cal.App.4th at p. 185; *In re Nicholas B.*, *supra*, 88 Cal.App.4th at p. 1134.)

The evidence here supports the court's finding of a risk of serious physical harm continuing into the future. The evidence established that Father frequently flew into rages, not only when interacting with A., but also when dealing with Mother and her family. Although A. could not state the precise number of times Father had hit her when he was angry, she repeatedly expressed her fear of him and concern that he would “snap,” suggesting this was a regular occurrence. (See *In re Veronica G.*, *supra*, 157 Cal.App.4th at p. 186 [minors' fear of parents, expressed to caseworker and law enforcement officer, supported that physical abuse was a fairly frequent occurrence].) Moreover, there was no dispute that Father struck A. with an open hand on various parts of her body on multiple occasions in the past.<sup>11</sup> None of the past incidents caused serious injury, but during the April 18 incident, Father's anger led him to squeeze A.'s neck hard enough to leave a mark and interfere with her breathing, a type of assault that could lead to serious injury or death. The court could reasonably conclude that the serious recent assault, the

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<sup>11</sup> Father's reference to the provision in section 300, subdivision (a), excluding from the definition of serious physical harm “reasonable and age-appropriate spanking to the buttocks where there is no evidence of serious physical injury” is beside the point. (Italics omitted.) Father was not charged with spanking A.

repeated less serious past assaults and Father's propensity to fly into rages when interacting with A. were indicative of a high risk of future physical abuse.

Father compares this situation with that of *In re Nicholas B.*, *supra*, where the minor's mother struck him once in the face causing bruises and swelling. (88 Cal.App.4th at p. 1130.) In that case, the mother "admitted and regretted" the physical abuse and according to the court, there were "no further allegations nor supporting facts to suggest the serious physical harm inflicted by the mother will occur again." (*Id.* at pp. 1134-1135.) Father did not admit grabbing A.'s neck or express regret for that action or for striking her on April 17 or on any other occasion. To the contrary, at the jurisdictional/dispositional hearing, he said he grabbed her collar, not her neck, and blamed the mark seen by multiple witnesses on Mother. He accused A. of lying about the source of the mark on her neck and about having a red mark on her thigh. He justified his action in "popp[ing] her two times on the leg" as an appropriate way to get her to "calm down" and "stop talking." Further, he expressed the belief that A. started to cry not because she had been hit and was frightened, but because she was angry about having privileges taken away. In addition, when relating the story of the shopping excursion to the caseworker in July, he seemed to regret not physically disciplining A. on that occasion. Father's attempts to minimize and justify his actions distinguish this case from *In re Nicholas B.* and provide further support for the court's conclusion that dependency intervention is warranted. (See *In re Mariah T.* (2008) 159 Cal.App.4th 428, 438-439 [in summarizing evidence that supported juvenile court's jurisdictional finding based on physical abuse, appellate court noted that mother "denied and minimized what she had done [to minors] and attempted to justify it as legitimate corporal punishment"].)

## B. *Disposition*

With respect to the dispositional order, Father agreed to cooperate by participating in an anger management program and other programs ordered by the court. He contends, however, that the court erred in limiting his contact with A. to monitored visitation. We conclude substantial evidence supported the court's dispositional order.

“The right to custody of one's children, free from unwarranted state interference, is a fundamental right.” (*In re Alexander K.* (1993) 14 Cal.App.4th 549, 558.) Accordingly, in a dependency proceeding, the burden of proof is greater at the dispositional phase than at the jurisdictional phase if the minor is to be removed from parental custody and control. (*In re Henry V.* (2004) 119 Cal.App.4th 522, 528.) “A child may not be taken from a parent's physical custody during juvenile dependency proceedings, except for a temporary detention period, unless clear and convincing evidence supports a ground for removal specified by the Legislature. Removal on any ground not involving parental rejection, abandonment, or institutionalization requires a finding that there are no reasonable means of protecting the child without depriving the parent of custody.” (*In re Henry V.*, *supra*, at p. 525.) “[A]n affirmative showing of harm or likely harm to the child is necessary in order to restrict parental custody or visitation.” (*In re Marriage of Birdsall* (1988) 197 Cal.App.3d 1024, 1030; see § 361, subd. (c) [minor may not be taken from physical custody of parent with whom child resides at time petition initiated, “unless the juvenile court finds clear and convincing evidence . . . [t]here is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parent's . . . physical custody”]; § 361.2, subd. (a) [if minor detained from

custodial parent and non-custodial parent requests custody, “the court shall place the child with the [non-custodial] parent unless it finds that placement with that parent would be detrimental to the safety, protection, or physical or emotional well-being of the child”].)

The court found “[b]y clear and convincing evidence” that “[s]ubstantial danger exists to the physical health of [A.] and/or [A.] is suffering severe emotional damage, and there is no reasonable means to protect [her] without removal from parent’s . . . physical custody.” We review a dispositional order restricting parental custody or visitation using the substantial evidence test, “bearing in mind the heightened burden of proof.” (*In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1654.) “Clear and convincing evidence requires a high probability, such that the evidence is so clear as to leave no substantial doubt.” (*In re Isayah C.* (2004) 118 Cal.App.4th 684, 695.)

The evidence supports the court’s dispositional order limiting Father to monitored visitation during the initial stages of reunification efforts. Father was found to have grabbed A.’s neck on one occasion and to have struck her during bursts of anger on multiple occasions. The court specifically found that Father had an anger management problem which led to the bouts of physical abuse. A. expressed fear of Father and concern about what would happen were she to be alone with him. The court could reasonably conclude that until Father made progress in controlling his anger and gained insight into learning to interact with a sometimes disobedient teenager without resorting to violence, visitation should be in a monitored setting.

## **DISPOSITION**

The orders are affirmed.

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MANELLA, J.

We concur:

WILLHITE, Acting P. J.

SUZUKAWA, J.